

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 18TH DECEMBER 2007 / 27TH AGRAHAYANA 1929

Crl.Rev.Pet.No. 4505 of 2007()

CRA.263/2005 of ADDL. DISTRICT & SESSIONS (ADHOC) FAST TRACK
COURT-II, PATHANAMTHITTA.

ST.1170/2004 of JUDL.MAGISTRATE OF FIRST CLASS COURT-II,
PATHANAMTHITTA
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REVN. PETITIONER: PETITIONER/ACCUSED

1. MOHANAN PILLAI, AGED 44 YEARS,
S/O CHELLAPPAN NAIR, MOHANA VILASOM,
PALICKAL, MAILAM, KOTTARAKKARA, KOLLAM.

2. SREEDEVI, AGED 34 YEARS,
W/O MOHANAN PILLAI, RESIDING AT THE
ABOVE ADDRESS.

BY ADV. SRI.SANTHAN V.NAIR
SRI.A.MUHAMMED RAFFI

RESPONDENTS: RESPONDENT/STATE/COMPLAINANT

1. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

2. T.HASSAN KUTTY,
PUTHANVEETIL PETTAH,
PATHANAMTHITTA.

BY ADV. SRI. K.S. SIVAKUMAR, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 18/12/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

V.RAMKUMAR, J.

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Crl.R.P. No. 4505 of 2007

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Dated this the 18th day of December, 2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioners who were the accused in S.T. No. 1170 of 2004 on the file of the J.F.C.M-II, Pathanamthitta challenge the conviction entered and the sentence passed against them for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioners and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioners re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the petitioners in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision Petitioners/accused failed to make the payment within 15 days of receipt of the statutory notice. Both the courts have considered and rejected the defence set up by the revision petitioners while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or

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impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioners.

4. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioners. Having regard to the facts and circumstances of the case, I am, however, inclined to modify the sentence in the light of the recent pronouncement by the Supreme Court that no default sentence can be imposed for an order for compensation under Section 357(3) Cr.P.C. The sentence imposed on the revision petitioners are set aside and instead they are sentenced to pay fine of Rs.1,32,000/-(Rupees one lakh and thirty two thousand only) {giving credit to the sum of Rs.78,000/- (Rupees seventy eight thousand only) deposited by the revision petitioners before the trial court pursuant to the directions issued by the lower appellate court and which amount shall be permitted to be withdrawn by the 2nd respondent/complainant.}which shall be deposited within **five** months from today and on default to make the payment, they shall suffer simple imprisonment for three months. The fine amount shall be paid as compensation under Section 357(1) Cr.P.C.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

V. RAMKUMAR, JUDGE.

CRL. R.P. NO. 4505 of 2007

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